

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1979

Road Runner Inn, Inc. and Harold M. Smithson v. Douglas C. Merrill and Colleen B. Merrill : Appellant's Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Roger S. Blaylock; Attorney for Defendant Merrill Dale R. Kent; Attorney for Defendant-Respondent Merrill W. Walden Lloyd; Attorneys for Plaintiffs and Appellants

Recommended Citation

Reply Brief, *Road Runner Inn v. Merrill*, No. 16374 (Utah Supreme Court, 1979).
https://digitalcommons.law.byu.edu/uofu_sc2/1683

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

ROAD RUNNER INN, INC. and HAROLD
M. SMITHSON,

Plaintiffs and
Appellants,

v.

DOUGLAS C. MERRILL and COLLEEN
B. MERRILL,

Defendants and
Respondents.

Case No. 16374

APPELLANT'S REPLY BRIEF

Appeal from Third Judicial District Court
of Salt Lake County, The
Honorable James S. Sawaya, Judge

W. Waldan Lloyd, Esq.
NIELSEN, HENRIOD, GOTTFREDSON
& PECK
Attorneys for Plaintiffs and
Appellants
400 Newhouse Building
Salt Lake City, Utah 84111

Roger S. Blaylock, Esq.
MORRIS AND BLAYLOCK
Attorneys for Defendant-
Respondent Douglas C.
Merrill
520 Kearns Building
Salt Lake City, Utah 84101

Dale R. Kent, Esq.
Attorney for Defendant-
Respondent Colleen B.
Merrill
660 South 2d East
Salt Lake City, Utah 84111

FILED

DEC - 7 1979

IN THE SUPREME COURT OF THE STATE OF UTAH

ROAD RUNNER INN, INC. and HAROLD
M. SMITHSON,

Plaintiffs and
Appellants,

v.

DOUGLAS C. MERRILL and COLLEEN
B. MERRILL,

Defendants and
Respondents.

Case No. 16374

APPELLANT'S REPLY BRIEF

Appeal from Third Judicial District Court
of Salt Lake County, The
Honorable James S. Sawaya, Judge

W. Waldan Lloyd, Esq.
NIELSEN, HENRIOD, GOTTFREDSON
& PECK
Attorneys for Plaintiffs and
Appellants
400 Newhouse Building
Salt Lake City, Utah 84111

Roger S. Blaylock, Esq.
MORRIS AND BLAYLOCK
Attorneys for Defendant-
Respondent Douglas C.
Merrill
520 Kearns Building
Salt Lake City, Utah 84101

Dale R. Kent, Esq.
Attorney for Defendant-
Respondent Colleen B.
Merrill

660 South 2d East
Salt Lake City, Utah 84111

TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT:	
POINT I. RESPONDENT'S BRIEF FAILS TO SHOW THAT DEFENDANT DOUGLAS MERRILL RECEIVED A FAIR CONSIDERATION FROM DEFENDANT COLLEEN MERRILL IN EXCHANGE FOR DEFENDANT DOUGLAS MERRILL'S INTEREST IN THE FAMILY HOME	3
POINT II. THE RECORD ON APPEAL CONTAINS SUFFICIENT EVIDENCE TO CLEARLY ESTABLISH THAT THE CHALLENGED CONVEYANCE WAS MADE WITH THE INTENT TO HINDER, DELAY OR DEFRAUD DEFENDANT DOUGLAS MERRILL'S CREDITORS.	7
CONCLUSION	8

TABLE OF AUTHORITIES

Cases

Newbauer v. Cloritier, 265 min. 539, 122 N.W.2d 623 (1963) . . . 8

Statutes and Rules

U.C.A. §25-1-4 (1953) 3

U.C.A. §25-1-3 (1953) 4

IN THE SUPREME COURT OF THE STATE OF UTAH

ROAD RUNNER INN, INC. and HAROLD)	
M. SMITHSON,)	
)	
Plaintiffs and)	Case No. 16374
Appellants,)	
)	
v.)	
)	
DOUGLAS C. MERRILL and COLLEEN)	
B. MERRILL,)	
)	
Defendants and)	
Respondents.)	
)	
)	

APPELLANT'S REPLY BRIEF

STATEMENT OF THE NATURE OF THE CASE

This is an action pursuant to the Utah Fraudulent Conveyances Act to set aside a conveyance from Defendant Douglas C. Merrill to Defendant Colleen B. Merrill as made without a fair consideration and with the intent to hinder, delay and defraud Plaintiffs Road Runner Inn, Inc. and Harold M. Smithson.

DISPOSITION IN THE LOWER COURT

The trial court held that Defendant Douglas C. Merrill had breached a contract with Plaintiff Road Runner Inn, Inc., thereby damaging Plaintiff Road Runner Inn, Inc. in the sum of \$28,300.00. The court entered judgment on behalf of Plaintiffs against Defendant Douglas C. Merrill in the amount

of \$28,300.00, plus costs and interest thereon. The court further held that the conveyance of real property by Defendant Douglas C. Merrill to Defendant Colleen B. Merrill on April 12, 1976, being part of a stipulated settlement in a divorce action between the Defendants, was for a fair consideration and was not a fraudulent conveyance. The court dismissed, no cause of action. Plaintiffs' claim to set aside the conveyance of real property. (R.44) Plaintiffs do not appeal from that portion of the court's order granting judgment against Defendant Douglas C. Merrill nor have Defendants-Respondents taken any action to perfect a cross appeal on that issue.

RELIEF SOUGHT ON APPEAL

Plaintiffs-Appellants seek to have the district court's judgment concerning the transfer of property between the Defendants reversed and remanded with the instruction that the district court enter judgment holding the transfer of the home and real property between Defendants to be a fraudulent conveyance and therefore null and void.

STATEMENT OF FACTS

Plaintiff Road Runner Inn, Inc. wishes to note to the Court its objection to Defendant Colleen B. Merrill's Statement of Facts as set forth in her brief on appeal. Her recitation of facts is unsupported by citations to the record on appeal.

Indeed, a close examination of the record will reveal that a great many of her statements cannot be supported in any way by the record. Moreover there is no indication (or even a claim by the Defendant) that the facts described in the responsive brief were placed into evidence before the trial judge or that the judge considered such facts in making his decision. On the contrary it is evident from the findings made by the court that the statement of facts of the Respondent is, for the most part, irrelevant to the issues which confronted the trial court in this case. Those issues are clearly set forth in Appellant's Brief, and involve whether there was sufficient consideration for the challenged conveyance and whether the conveyance was made with the intent to hinder, delay or defraud creditors.

Plaintiff-Appellant urges the Court to disregard the statements contained within Defendant Colleen Merrill's brief which are not supported by citations to the record on appeal.

ARGUMENT

POINT I

RESPONDENT'S BRIEF FAILS TO SHOW THAT
DEFENDANT DOUGLAS MERRILL RECEIVED A
FAIR CONSIDERATION FROM DEFENDANT
COLLEEN MERRILL IN EXCHANGE FOR DEFENDANT
DOUGLAS MERRILL'S INTEREST IN THE FAMILY
HOME

In its brief, Plaintiff Road Runner Inn, Inc. alleges that the challenged conveyance violated U.C.A. §25-1-4 (1953) in that Defendant Douglas Merrill was insolvent following the

conveyance and that the conveyance was made without fair consideration.

Appellant points out that Respondent makes no attempt in her brief to contest the issue of Douglas Merrill's insolvency following the conveyance, but seems to argue instead that fair consideration for the conveyance was established by the fact that Defendant Colleen Merrill supposedly assisted in the construction of the home located at 2341 Neffs Lane. (Respondent's Brief, at 11.) Her part in the construction of the home, she claims, was sufficient consideration for the conveyance from Douglas Merrill of his joint tenancy interest. This argument fails when considered in light of the facts contained in the record and when examined with regard to the statutory definition of "fair consideration".

The statutory concept of "fair consideration" is concerned primarily with a fair or equivalent exchange:

(1) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied; or,

(2) When such property, or obligation, is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small when compared with the value of the property or obligation obtained.
U.C.A. §25-1-3 (1953).

Thus, a fair consideration exists when a transferee gives to the transferor, in exchange for the property received, substantially

the full equivalent value of the transferred property in light of all relevant circumstances. Respondent has failed to set forth any facts, from the record or otherwise, which would establish that the work allegedly performed by Defendant Colleen Merrill in the construction of the family home was of a value fairly equivalent to the joint tenancy interest she received from Defendant Douglas Merrill at the time of the property settlement and execution of the quit-claim deed.

Presuming that Defendant Colleen Merrill performed one-half of the work in the construction of the family home as she claims, such work would only entitled her to a minimum of one-half of the interest in the home at best. As a result, Respondents' argument as to the labor performed by Colleen Merrill is irrelevant.

Simply stated, even if Defendant Colleen Merrill did aid in the construction of the family home, she has produced no evidence that such labor would entitle her to any more than the one-half interest she always possessed as a joint tenant.

One further point remains. Defendant Colleen B. Merrill seems to argue that Defendant Douglas Merrill's homestead exemption exceeds his share of the equity in the home. Thus, there would be nothing for Plaintiff Road Runner Inn, Inc. to attach and levy upon. Even if the assertion is accurate, it is irrelevant to the issues before this Court.

This Court must decide whether Defendant Douglas Merrill received a fair consideration in return for quit-claiming his interest in the family home to Defendant Colleen Merrill and whether such conveyance was made with the intent to hinder, delay or defraud creditors. Whether prior to his conveyance Douglas Merrill could have raised the homestead exemption to protect his equity in the home against attachment or execution is irrelevant to the question of whether the conveyance was fraudulent.

In summary, Appellant notes that even if Colleen Merrill did aid in the construction of the family home such service does not entitle her to any more than the one-half interest in the family home she always possessed as a joint tenant. Certainly such unmeasured past services do not fulfill the statutory requirements for fair consideration.

POINT II: THE RECORD ON APPEAL CONTAINS SUFFICIENT EVIDENCE TO CLEARLY ESTABLISH THAT THE CHALLENGED CONVEYANCE WAS MADE WITH THE INTENT TO HINDER, DELAY OR DEFRAUD DEFENDANT DOUGLAS MERRILL'S CREDITORS.


In Point II of her brief Defendant Colleen B. Merrill

alleges that the evidence is insufficient to show that the subject conveyance was made with the intent to hinder, delay or defraud Douglas Merrill's creditors. In support of this contention, she states that she was not aware of Douglas Merrill's obligation to Plaintiff Road Runner Inn, Inc. at the time of the conveyance. Although this alleged fact might have some relevance to the issue before the Court if it were part of the record, a thorough review of the record reveals that no such fact is contained therein. Furthermore, even if she was not aware of the specific debt to Plaintiff Road Runner Inn, Inc., she was certainly aware on the date of the conveyance that it would substantially hinder, delay or ultimately defraud any of Douglas Merrill's creditors in the collection of their lawful debts.

Colleen Merrill knew on the date of the conveyance that after its completion Douglas Merrill would have assets totaling no more than \$1,500.00. (Amended Finding of Fact No. 10; R.63) and that he had assumed all the debts and obligations incurred by the parties during their marriage. (Amended Finding of Fact No. 8; R.62). These obligations totaled at least \$28,000.00. (Amended Finding of Fact No. 14; R.63). Thus, Colleen Merrill knew that Douglas Merrill had virtually no assets and had assumed heavy liabilities. Furthermore, she knew that any creditor of

would necessarily have to conclude that they are either irrelevant or unsubstantial. Thus, Appellant urges this Court to hold that the challenged conveyance was fraudulent as to the creditors of the Defendant Douglas C. Merrill.

Respectfully submitted this 7th day of December, 1979.


W. Malden Lloyd
Jeffrey M. Jones
NIELSEN, HENRIOD, GOTTFREDSON
& PECK
Attorneys for Plaintiffs and
Appellants
400 Newhouse Building
Salt Lake City, Utah 84111

CERTIFICATE OF SERVICE

SERVED the foregoing Appellants' Reply Brief by hand
delivering a copy to the following:

Roger S. Blaylock, Esq.
MORRIS AND BLAYLOCK
Attorneys for Defendant-Respondent Douglas C. Merrill
520 Kearns Building
Salt Lake City, Utah 84101

Dale R. Kent, Esq.
Attorney for Defendant-Respondent Colleen B. Merrill
660 South 2d East
Salt Lake City, Utah 84111

this 7th day of December, 1979.

